

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2815

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to repeal §18B-1-5a and 18B-1-10 of the Code of West Virginia, 1931, as amended; to
2 repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to
3 repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend
4 and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1,
5 §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2,
6 §18B-1D-4, and §18B-1D-7 of said code; to amend said code by adding thereto a new
7 section, designated §18B-1F-10; to amend and reenact §18B-2A-3 and §18B-2A-4 of said
8 code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of
9 said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said
10 code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said
11 code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6,
12 §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said
13 code; and to amend said code by adding thereto a new section, designated §18B-19-19,
14 all relating to public education higher education governance generally; defining terms;
15 repealing obsolete provisions of code; clarifying scope of rule-making authority of higher
16 education policy commission and certain institutions of higher education; eliminating
17 outdated language; providing for rule-making procedures; requiring promulgation of rules
18 by commission, council and certain institutions of higher education; providing for shorter
19 time period for commission and council to review and comment on rules proposed by
20 governing boards of institutions of higher education; providing legislative intent; providing
21 for composition of commission; providing for primary responsibility of commission;
22 updating and clarifying powers of commission; limiting authority of commission over
23 certain institutions of higher education; eliminating authority of commission to assess
24 institutions for payment of expenses of commission and for funding of statewide higher
25 education services, obligations, or initiatives; clarifying authority of commission over
26 review and approval of academic programs; repealing and eliminating outdated language;
27 eliminating authority of commission with respect to certain financial and budget reviews

and approvals; directing the commission to examine general revenue appropriations of higher education institutions and to report findings to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability with a recommendation to the Legislature on a formula for allocation of general revenue to be appropriated to the institutions; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education; providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education; eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; providing for a study by the West Virginia Development Office relating to foundations and private entities who focus on research and job development and that receive or have received since July 1, 2012, appropriation support from the State of West Virginia; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing

governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation and determination of minimum standards for conferring degrees; eliminating authority of commission to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to proposed a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize

a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing boards to undertake projects not contained in campus development plan; eliminating certain commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to leasing of real property by commission, council, and governing boards; requiring notice to certain local governmental entities and legislators for certain sales and leases of land; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; providing for

the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation; providing additional requirements for governing boards to enter into sale lease-back transactions; and requiring certain governing boards to provide certain information to commission.

Be it enacted by the Legislature of West Virginia:

That §18B-1-5a and §18B-1-10 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1A-3 of said code be repealed; that §18B-1B-10 and §18B-1B-13 of said code be repealed; that §18B-2-5 and §18B-2-7 of said code be repealed; that §18B-5-2a of said code be repealed; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code be amended and reenacted; that §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1F-10; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-4-7 of said code be amended and reenacted; that §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code be amended and reenacted; that §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code be amended and reenacted; that §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-19-19, all to read as follows:

ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

3 (1) “Administratively linked community and technical college” means a state institution of
4 higher education delivering community and technical college education and programs which has
5 maintained a contractual agreement to receive essential services from another accredited state
6 institution of higher education prior to July 1, 2008;

7 (2) “Advanced technology center” means a facility established under the direction of an
8 independent community and technical college or the council for the purpose of implementing and
9 delivering education and training programs for high-skill, high-performance Twenty-first Century
10 workplaces;

11 (3) “Approve” or “approval”, when used in reference to action by the Commission or the
12 Council, means action in which the governance rationale of a governing board under its
13 jurisdiction is given due consideration, and the action of the Commission is to additionally
14 establish whether the proposed institutional action is consistent with law and established policy
15 and is an appropriate advancement of the public interest;

16 (4) “Board of visitors” means the advisory board previously appointed for the West Virginia
17 Graduate College and the advisory board previously appointed for West Virginia University
18 Institute of Technology, which provide guidance to the Marshall University Graduate College and
19 West Virginia University Institute of Technology, respectively;

20 (5) “Broker” or “brokering” means serving as an agent on behalf of students, employers,
21 communities or responsibility areas to obtain education services not offered at that institution.
22 These services include courses, degree programs or other services contracted through an
23 agreement with a provider of education services either in-state or out-of-state;

24 (6) “Chancellor” means the Chancellor for Higher Education where the context refers to a
25 function of the Higher Education Policy Commission. “Chancellor” means the Chancellor for
26 Community and Technical College Education where the context refers to a function of the West
27 Virginia Council for Community and Technical College Education;

(7) “Chancellor for Community and Technical College Education” means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(8) “Chancellor for Higher Education” means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(9) “Collaboration” means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(10) “Community and technical college”, in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg;

(11) “Community and technical college education” means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(12) “Community and technical college education program” means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational

education programs” means community and technical college education programs as defined in this subsection;

(13) “Confirm” or “confirmation”, when used in reference to action by the Commission, means action in which substantial deference is allocated to the governing authority of a governing board under its jurisdiction and the action of the Commission is to review whether the proposed institutional action is consistent with law and established policy;

(14) “Council” means the West Virginia Council for Community and Technical College Education created by article two-b of this chapter;

(15) “Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

(16) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(17) “Exempted schools” means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

(18) “Free-standing community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(19) “Governing boards” or “boards” means the institutional boards of Governors created by section one, article two-a of this chapter;

(20) “Higher Education Policy Commission”, “Policy Commission” or “Commission” means the commission created by section one, article one-b of this chapter;

(21) “Independent community and technical college” means a state institution of higher education under the jurisdiction of the council which is independently accredited, is governed by

its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

(22) "Institutional compact" means the compact developed by a state institution of higher education, consistent with the public policy agenda for higher education;

(23) "Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(24) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(25) "Sponsoring institution" means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;

(26) "State college and university" means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University or West Virginia State University;

(27) “State institution of higher education” means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(28) “Statewide network of independently accredited community and technical colleges” or “community and technical college network” means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; and

(29) “Vice Chancellor for Administration” means the person employed in accordance with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this code to “Senior Administrator” means Vice Chancellor for Administration.

§18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making authority does not limit, overrule, restrict, supplant or supersede the rule-making authority provided to the exempted schools.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend or repeal any rule under this code:

(1) “Rule” means any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institution-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive,

standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.

(2) Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The commission shall promulgate a rule to guide the development of rules made by the governing boards, including a process for comment by the commission as appropriate, except the exempted schools, who shall each promulgate their own such rules. The council shall promulgate a rule to guide the development and approval of rules made by the governing boards. The commission and council shall provide technical assistance in rulemaking as requested. The rules promulgated by the exempted schools, the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a thirty-day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines and other policy statements are posted and can be accessed by the public;

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible; and

(D) Except for the exempted schools, a procedure for the governing board to follow in submitting its rules for review and comment by the commission and approval by the council, as appropriate:

(i) The governing boards shall submit rules for review and comment to the commission.

(ii) The commission shall return to the governing board its comments and suggestions within fifteen business days of receiving the rule.

(iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record these as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter eighteen-c of this code no later than July 1, 2011 unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within fifteen business days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended

or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

(i) Any rule of the commission or council in effect at the time of the re-enactment of this section or approved by the Legislature during its 2017 Regular Session shall remain in effect and applicable to an institution of higher education under the jurisdiction of the commission or council until such time as an institution exercises its authority to adopt a rule pursuant to this chapter.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-1. Higher education policy commission established; development of public policy agenda.

There is hereby created the “Higher Education Policy Commission”, hereinafter referred to as the “commission”. It is the intent of the Legislature that the commission be responsible to provide shared services in a cost-effective manner upon request by the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this code, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by the governing boards, as delineated in this chapter; and develop and gain consensus around the public policy agenda for higher education and other statewide issues pursuant to section one-a, article one of this chapter under the following conditions:

(a) It is the responsibility of the commission to work collaboratively with the governing boards and the council to develop and gain consensus around the public policy agenda for higher education.

(b) It is the responsibility of the council to oversee the implementation of the public policy agenda for the institutions under its jurisdiction.

(c) All matters of governance not specifically assigned to the commission or council by law are the duty and responsibility of the governing boards.

§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

(a) The commission is comprised of ten members, all of whom are entitled to vote. The membership of the commission is as follows:

(1) The Secretary of Education and the Arts, ex officio.

(2) The State Superintendent of Schools, ex officio;

(3) The chair of the West Virginia Council for Community and Technical College Education, ex officio.

(4) Four at-large members who are citizens of the state, appointed by the Governor, by and with the advice and consent of the Senate.

(5) Three at-large members who are designated as higher education representatives, appointed by the Governor, by and with the advice and consent of the Senate; for each of the higher education representatives, the Governor shall choose from recommendations made by any state college and university or exempted school and the Governor may request additional recommendations from state colleges and universities or exempted schools if in the governor in his or her sole discretion determines that additional recommendations are necessary for appointments to the commission.

(b) Each of the at-large members appointed by the Governor shall represent the public interest and shall be committed to the legislative intent and goals set forth in state law and policy.

(c) The Governor may not appoint any person to be a member of the commission who is an officer, employee or member of the council or an advisory board of any state college or university or exempted school; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of this state or any of its political subdivisions; an appointee or employee of any governing board; or an

immediate family member of any employee under the jurisdiction of the commission, the council or any governing board.

(d) Of the seven, at-large members appointed by the Governor:

(1) No more than four may belong to the same political party;

(2) At least two shall be appointed from each congressional district; and

(3) Effective July 1, 2008, no more than one member may serve from the same county.

(e) The at-large members appointed by the Governor serve overlapping terms of four years.

(f) The Governor shall appoint a member to fill any vacancy among the seven at-large members, by and with the advice and consent of the Senate. Any member appointed to fill a vacancy serves for the unexpired term of the vacating member. The Governor shall fill the vacancy within thirty days of the occurrence of the vacancy.

(g) An at-large member appointed by the Governor may not serve more than two consecutive terms.

(h) Before exercising any authority or performing any duties as a member of the commission, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.

(i) A member of the commission appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as

specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction except the exempted schools. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

(3) In collaboration with the council and the governing boards:

(A) Building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assisting governing boards to carry out their duty effectively to govern the individual institutions of higher education;

(4) Except the exempted schools, review and comment on each compact for the governing boards under its jurisdiction, and final confirmation of each compact;

(5) Review and confirm the bi-annual updates of the institutional compacts, except the exempted schools;

(6) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability.

(7) Upon request, provide shared services to a state institution of higher education;

(8) Administer scholarship and grant programs as provided for in this code;

(9) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration

55 by the Governor and the Legislature as part of the appropriation request process pursuant to
56 article nineteen of this chapter;

57 (11) Except the exempted schools, develop standards and evaluate governing board
58 requests for capital project financing in accordance with article nineteen of this chapter;

59 (12) Except the exempted schools, ensure that governing boards manage capital projects
60 and facilities needs effectively, including review and approval of capital projects, in accordance
61 with article nineteen of this chapter;

62 (13) Acquire legal services as considered necessary, including representation of the
63 commission, the governing boards, employees and officers before any court or administrative
64 body, notwithstanding any other provision of this code to the contrary. The counsel may be
65 employed either on a salaried basis or on a reasonable fee basis. In addition, the commission
66 may, but is not required to, call upon the Attorney General for legal assistance and representation
67 as provided by law;

68 (14) Employ a Chancellor for Higher Education pursuant to section five of this article;

69 (15) Employ other staff as necessary and appropriate to carry out the duties and
70 responsibilities of the commission and the council, in accordance with article four of this chapter;

71 (16) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and
72 other staff;

73 (17) Advise and confirm in the appointment of the presidents of the institutions of higher
74 education under its jurisdiction pursuant to section six of this article, except the exempted schools.
75 The role of the commission in confirming an institutional president is to assure through personal
76 interview that the person selected understands and is committed to achieving the goals,
77 objectives and priorities set forth in the compact, in section one-a, article one and article one-d of
78 this chapter;

79 (18) Approve the total compensation package from all sources for presidents of institutions
80 under its jurisdiction, except the exempted schools, as proposed by the governing boards. The

governing boards, except the exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the Commission will receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(19) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of Schools;

(21) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except the exempted schools, including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

105 (C) Notwithstanding any other provision of law or this code to the contrary, the council,
106 commission and governing boards are not subject to the jurisdiction of the Chief Technology
107 Officer for any purpose;

108 (22) Establish and implement policies and procedures to ensure that a student may
109 transfer and apply toward the requirements for a bachelor's degree the maximum number of
110 credits earned at any regionally accredited in-state or out-of-state community and technical
111 college with as few requirements to repeat courses or to incur additional costs as are consistent
112 with sound academic policy;

113 (23) Establish and implement policies and procedures to ensure that a student may
114 transfer and apply toward the requirements for any degree the maximum number of credits earned
115 at any regionally accredited in-state or out-of-state higher education institution with as few
116 requirements to repeat courses or to incur additional costs as are consistent with sound academic
117 policy;

118 (24) Establish and implement policies and procedures to ensure that a student may
119 transfer and apply toward the requirements for a master's degree the maximum number of credits
120 earned at any regionally accredited in-state or out-of-state higher education institution with as few
121 requirements to repeat courses or to incur additional costs as are consistent with sound academic
122 policy;

123 (25) Establish and implement policies and programs, in cooperation with the council and
124 the governing boards, through which a student who has gained knowledge and skills through
125 employment, participation in education and training at vocational schools or other education
126 institutions, or Internet-based education programs, may demonstrate by competency-based
127 assessment that he or she has the necessary knowledge and skills to be granted academic credit
128 or advanced placement standing toward the requirements of an associate's degree or a
129 bachelor's degree at a state institution of higher education;

130 (26) Seek out and attend regional, national and international meetings and forums on
131 education and workforce development-related topics as, in the commission's discretion, are
132 critical for the performance of their duties as members, for the purpose of keeping abreast of
133 education trends and policies to aid it in developing the policies for this state to meet the
134 established education goals, objectives and priorities pursuant to section one-a, article one and
135 article one-d of this chapter;

136 (27) Promulgate and implement a rule for higher education governing boards and
137 institutions, except the exempted schools, to follow when considering capital projects pursuant to
138 article nineteen of this chapter, which rule shall provide for appropriate deference to the value
139 judgments of governing boards under the jurisdiction of the commission;

140 (28) Submit to the appropriate agencies of the executive and legislative branches of state
141 government an appropriation request that reflects recommended appropriations for the
142 commission and the governing boards under its jurisdiction. The commission shall submit as part
143 of its appropriation request the separate recommended appropriation request it received from the
144 council, both for the council and for the governing boards under the council's jurisdiction, including
145 the exempted schools. The commission annually shall submit the proposed allocations based on
146 each institution's progress toward meeting the goals of its compact;

147 (29) The commission may assess institutions under its jurisdiction, including the exempted
148 schools, for the payment of expenses of the commission or for the funding of statewide higher
149 education services, obligations or initiatives related to the goals set forth for the provision of public
150 higher education in the state: *Provided*, That the commission may not assess institutions pursuant
151 to this subdivision on or after July 1, 2018;

152 (30) Promulgate rules allocating reimbursement of appropriations, if made available by the
153 Legislature, to governing boards for qualifying noncapital expenditures incurred in providing
154 services to students with physical, learning or severe sensory disabilities;

(31) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter;

(32) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(33) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(34) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Such other policies as the commission and council consider appropriate;

(35) Assist governing boards in actions to implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(36) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(37) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(38) Development and approval of institutional mission definitions except the exempted schools, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(39) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for the exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in section two, article one-c of this chapter;

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(1) New programs should not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(2) New programs which will require significant additional expense investments for implementation should not be implemented unless the institution demonstrates that:

(i) The expenses will be addressed by effective reallocations of existing institutional resources; or

(ii) The expenses can be legitimately spread out over future years and will be covered by reasonably anticipated additional net revenues from new enrollments;

(3) A new undergraduate program which is significantly similar to an existing program already in the geographic service area should not be implemented unless the institution

requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided*, That the academic programs of the exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may re-file the request for approval with the commission to address any identified deficiencies. Within thirty days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

(40) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(41) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(42) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(43) Developing and distributing information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(44) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter;

(45) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(46) (A) For all governing boards under its jurisdiction, except for the exempted schools, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

(B) For the governing boards of, the exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(47) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than ninety percent within six months post-graduation; and

(48) May provide information, research and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article: *Provided, That the*

provisions of this subsection shall not be construed to shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at all higher education institutions, including four-year baccalaureate institutions and the community and technical colleges, and on or before January 1, 2018, the commission shall deliver its report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. This report shall include a recommendation to the Legislature on a formula for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. On such basis, the commission shall make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for fiscal year 2019, based upon the total general

revenue appropriations that such institutions receive in aggregate in the enacted budget for fiscal year 2018.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) *Appointment of institutional presidents.* — Appointment of presidents of the state institutions of higher education, except the exempted schools, shall be made as follows:

(1) The initial contract term for a president may not exceed two years. At the end of the initial contract period, and subject to the provisions of subsection (c) of this section, the governing board may offer the president a contract of longer duration, but not to exceed five years.

(2) The president of a state institution of higher education serves at the will and pleasure of the appointing governing board.

(3) Subject to the confirmation of the commission, the governing boards of the following institutions, appoint a president: Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University and West Virginia State University. The exempted schools may appoint a president without the confirmation or approval of the Commission.

(4) Subject to the approval of the council, the governing board of the community and technical college appoints a president for Blue Ridge Community and Technical College, Bridge Valley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg.

(b) *Other appointments.* — The President of West Virginia University appoints a campus president to be the administrative head of Potomac State College of West Virginia University and a campus president to be the administrative head of West Virginia University Institute of Technology.

24 (c) *Evaluation of presidents.* —

25 (1) The appointing governing board shall conduct written performance evaluations of the
26 institution's president. Evaluations shall be done at the end of the initial contract period and in
27 every third year of employment as president thereafter, recognizing unique characteristics of the
28 institution and using institutional personnel, boards of advisors as appropriate, staff of the
29 appropriate governing board and persons knowledgeable in higher education matters who are
30 not otherwise employed by a governing board. A part of the evaluation shall be a determination
31 of the success of the institution in meeting the requirements of its institutional compact and in
32 achieving the goals, objectives and priorities established in articles one and one-d of this chapter.

33 (2) After reviewing the evaluations, the governing board shall make a determination by
34 majority vote of its members on continuing employment and the compensation level for the
35 president in accordance with subsection (a) of this section.

36 (d) The legislative rules of the commission and council promulgated in accordance with
37 section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code which
38 are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide
39 guidance for the governing boards, but are not applicable to the exempted schools, in filling
40 vacancies in the office of president in accordance with this chapter and shall include, but are not
41 limited to, clarifying the powers, duties and roles of the governing boards, commission, council
42 and chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-2. Definitions.

1 (a) *General.* — For the purposes of this article and section one-a, article one of this
2 chapter, terms have the meaning ascribed to them in section two, article one of this chapter,
3 unless the context in which the term is used clearly requires a different meaning or a specific
4 definition is provided in this section.

5 (b) *Definitions.* —

(1) "Accountability system for public higher education" or "accountability system" means all research, reports, documents, data and any other materials, the collection, analysis and dissemination of which are necessary or expedient to accomplish the purposes of this article or section one-a, article one of this chapter. The system includes legislative goals, objectives and priorities; public policy agendas; statewide master plans; state and institutional compacts; implementation plans; institutional mission statements and master plans; and the statewide report card.

(2) "Education partnership to achieve state goals and objectives" or "education partnership" means the formal and informal working relationships established between and among the State of West Virginia, the commission, the council, the State Board of Education and State Department of Education and the state institutions of higher education for the purpose of achieving state goals and objectives.

(3) "Functional literacy rate" means the percentage of adults over the age of seventeen who are able to read beyond a fourth grade level and interpret basic information from sources such as road signs, job applications, newspaper articles and food and medicine labels.

(4) "Goals" means those long-term public purposes which are the desired and expected end result for which public higher education is established.

(5) "Implementation plan" means a document developed within the higher education community that identifies a series of objectives, sets forth performance indicators that can be used to determine if objectives are being achieved, outlines strategies for accomplishing the objectives and identifies benchmarks for evaluating progress in accomplishing the objectives over the life cycle of the plan.

(6) "Institutions under the jurisdiction of the commission" relative to the accountability system established by this article and section one-a, article one of this chapter means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College, and West Virginia State University.

(7) "Institutions under the jurisdiction of the council" relative to the accountability system established by this article and section one-a, article one of this chapter means Blue Ridge Community and Technical College, the Community and Technical College at West Virginia University Institute of Technology, Eastern West Virginia Community and Technical College, Marshall Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, West Virginia State Community and Technical College and West Virginia University at Parkersburg.

(8) "Net college costs" means the total cost of tuition, room and board minus the amount of financial aid a student receives.

(9) "Objectives" means the ends to be accomplished or attained within a specified period of time for the purpose of meeting the established goals.

(10) "Priority" or "priorities" means the order in which objectives are to be addressed for the purpose of achieving state goals.

(11) "Strategy" or "strategies" means specific activities carried out by public higher education which are directed toward accomplishing specific objectives.

(12) "Statewide master plan" or "system master plan" means a document developed by the council or commission that sets forth system goals, objectives and strategies and is aligned with, but not limited to, meeting state goals, objectives and priorities.

(13) "STEM courses and programs" means curricula leading to a degree or other recognized credential in the science, technology, engineering and mathematics fields of study or specialization.

(14) "State compact" means a formal, written agreement between the council and/or the commission and at least one other member of the education partnership to achieve state goals and objectives where significant collaboration and commitment of resources between the parties to the agreement is required in order to achieve the desired results.

§18B-1D-4. Responsibilities of Higher Education Policy Commission and Council for Community and Technical College Education; development of public policy agendas; reports; institutional responsibilities.

1 (a) It is the responsibility of the commission, in cooperation with the council, to develop,
2 oversee and advance the public policy agenda mandated by section four, article one-b of this
3 chapter to address the goals and objectives established pursuant to this article and section one-
4 a, article one of this chapter, including, but not limited to, aligning state and institutional
5 compacts, master plans, implementation plans and institutional missions for institutions of
6 higher education except the exempted schools with state goals and objectives to accomplish the
7 purposes of this article.

8 (b) It is the responsibility of the council, in cooperation with the commission when
9 applicable, to develop, oversee and advance the public policy agenda mandated by section six,
10 article two-b of this chapter to address the goals and objectives established pursuant to this article
11 and section one-a, article one of this chapter, including, but not limited to, aligning state and
12 institutional compacts, master plans, implementation plans and institutional missions with state
13 goals and objectives to accomplish the purposes of this article.

14 (c) It is further the responsibility of the commission and council to collect the data, for
15 institutions of higher education including the exempted schools, assemble it in the appropriate
16 format and transmit all reports and any other essential documents as needed to fulfill the purposes
17 of this article. Each report shall contain a brief, concise executive summary and shall include
18 trends and recommendations in text format. Recommendations shall be ranked by order of
19 importance and shall be supported by objective data available elsewhere in the report. In addition
20 to those specifically mandated by this chapter or chapter eighteen-c of this code, reporting
21 responsibilities include, but are not limited to, the following:

22 (1) Ensuring that data systems collect the essential information state-level policymakers'
23 need to answer key policy questions to fulfill the purposes of the accountability system established
24 pursuant to this article and section one-a, article one of this chapter;

(2) Collaborating with public education to establish policies to link existing pre-K, K-12, higher education and teacher data systems to enable tracking of student progress and teacher performance over time; and

(3) Ensuring that reports provide data analyses to determine if students entering the public higher education systems are prepared for post-secondary education and if students obtaining degrees, certificates or other credentials are prepared to pursue careers or to continue their education.

(d) It is the responsibility of public institutions of higher education except the exempted schools to report to the commission or the council, as appropriate, on plans, accomplishments and recommendations to implement the goals and objectives contained in the institutional and state compacts.

§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.

(a) The Legislature finds that West Virginia long has recognized the value of education and, on a per capita income basis, ranks very high among the states in its investment to support public education. The Legislature further finds that a combination of state and national demographic and economic factors as well as significant changes in methods of course and program delivery compel both the state and public higher education to create a process that will strengthen institutional capacity to provide the services so valued by the citizens of the state and so essential to promoting economic vitality.

(b) Therefore, each state college or university except the exempted schools, shall prepare an institutional compact for submission to the commission and each community and technical college shall prepare an institutional compact for submission to the council. When the process herein provided is completed, the resulting institutional compact shall contain at a minimum the following basic components:

(1) Institutional strategies for focusing resources on meeting the goals and objectives set forth in this article and section one-a, article one of this chapter; and

(2) Commission or council strategies for promoting and supporting the institution in fulfilling its mission and objectives, to make it more competitive with its peers and to ensure the continuity of academic programs and services to its students.

(c) In addition to the basic contract components described in subsection (b) of this section, each compact shall contain at least the following elements:

(1) A determination of the mission of the institution which specifically addresses changes necessary or expedient to accomplish the goals and objectives articulated by the state and the appropriate statewide master plan;

(2) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(3) A comprehensive assessment of education needs within the institution's geographic area of responsibility;

(4) A strategy to ensure access to comprehensive community and technical college and workforce development services within each respective region of the state consistent with the mission of the institution;

(5) Provision for collaboration and brokering of education services as necessary or expedient to carry out the institutional mission and meet its objectives;

(6) Provision of student services at the optimum level to support the institutional mission and to achieve state goals and objectives;

(7) Strategies for using existing infrastructure and resources within each region, where feasible, to increase student access while controlling costs and maintaining academic quality; and

(8) Other public policy objectives or initiatives adopted by the commission or council pursuant to the intent and purposes of this article and section one-a, article one of this chapter.

(d) Each institutional compact shall be updated bi-annually and shall follow the same general guidelines contained in this section.

(e) Development and updating of the institutional compacts is subject to the following conditions:

(1) The ultimate responsibility for developing and updating the compacts at the institutional level resides with the board of advisors or the board of governors, as appropriate. It is the responsibility of the commission or council to provide technical assistance as requested and to assist the institution, with the exception of the exempted schools, in development of the strategies to promote and support the institution pursuant to subsection (b) of this section;

(2) The commission and the council each shall establish a date by which institutions, with the exception of the exempted schools, under their respective jurisdictions shall submit their compacts to the commission or council pursuant to the provisions of this article. The date established by each state-level coordinating board shall apply uniformly to all institutions under the jurisdiction of that coordinating board and shall meet the following additional conditions:

(A) Allow sufficient time for careful analysis of the compacts by the central office staff and for review by members of the commission or the council, as appropriate; and

(B) Allow sufficient time for the institutions to make necessary revisions to the compacts as provided in this section.

(3) The commission shall review each compact from the institutions under its jurisdiction and either confirm the compact or return it with specific comments for change or improvement. The council shall review each compact from the institutions under its jurisdiction and either adopt the compact or return it with specific comments for change or improvement. The commission and council, respectively, shall continue this process as long as each considers advisable;

(4) By May 1 bi-annually, if the institutional compact of any institution as presented by that institution is not confirmed by the commission or adopted by the council, then the commission or

council is empowered and directed to develop and adopt the institutional compact for the institution and the institution is bound by the compact so adopted; and

(5) As far as practicable, the commission and council each shall establish uniform processes and forms for the development and submission of the institutional compacts by the institutions under their respective jurisdictions, taking into consideration the differences in institutional missions and objectives. As a part of this function, the commission and council each shall organize the statements of legislative goals and objectives contained in this article and section one-a, article one of this chapter in a manner that facilitates the purposes therein.

(f) Assignment of geographic areas of responsibility. --

(1) The commission shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, except for the exempted schools. For institutions other than the exempted schools, the geographic areas of responsibility are made a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve state goals and objectives. The commission and the council each shall develop data-based measures to determine the extent to which institutions, with the exception of the exempted schools, under their respective jurisdictions are providing higher education services aligned with state goals and objectives and institutional missions within their geographic areas of responsibility. This information shall be reported in the statewide report card established pursuant to section eight of this article.

(2) The council shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, including the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology and the regional campus known as West Virginia University at Parkersburg.

87 (3) The geographic areas of responsibility for the state institutions of higher education
88 known as West Virginia School of Osteopathic Medicine, Marshall University and West Virginia
89 University are assigned by the Legislature.

90 (4) The benchmarks established in the institutional compacts include measures of
91 programs and services by geographic area throughout the assigned geographic area of
92 responsibility.

93 (g) The compacts shall contain benchmarks to be used to determine progress toward
94 meeting the objectives established in the compacts. The benchmarks shall meet the following
95 criteria:

96 (1) They shall be objective;

97 (2) They shall be directly linked to the objectives in the compacts;

98 (3) They shall be measured by the indicators described in subsection (h) of this section;

99 and

100 (4) Where applicable, they shall be used to measure progress in geographic areas of
101 responsibility.

102 (h) The rules required by subsection (c), section one of this article shall include indicators
103 which measure the degree to which the goals and objectives set forth in this article and section
104 one-a, article one of this chapter are being met by the institutions under the jurisdiction of the
105 commission and the council, respectively.

106 (1) The rules pertaining to benchmarks and indicators in effect for the commission and the
107 council on the effective date of this section remain in effect for the institutions under their
108 respective jurisdictions until amended, modified, repealed or replaced by the commission or the
109 council, respectively, pursuant to the provisions of this article, section six, article one of this
110 chapter and article three-a, chapter twenty-nine-a of this code.

111 (2) The rules shall set forth at least the following as pertains to all state institutions of
112 higher education, except the exempted schools:

(A) The indicators used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to provide the following information:

(i) Measurable evidence that the pursuits of the institution are focused on the education needs of the citizens of the state and are aligned with the objectives of the institutional compacts and statewide master plans;

(ii) Delineation of the objectives and benchmarks for an institution so that the commission or council can precisely measure the degree to which progress is being made toward achieving the goals and objectives provided in this article and section one-a, article one of this chapter: *Provided*, That the commission has no authority regarding the objectives and benchmarks for exempted schools; and

(iii) Identification of specific objectives within the master plan or compact of an institution that are not being met or toward which sufficient progress is not being made.

(3) In addition to any other requirement, the rule established by the council shall set forth at least the following as pertains to community and technical college education:

(A) Benchmarks and indicators which are targeted to identify the following:

(i) The degree to which progress is being made by institutions toward meeting state goals and objectives and the essential conditions for community and technical college education pursuant to section three, article three-c of this chapter;

(ii) Information and data necessary to be considered by the council in making the determination required by section three, article two-c of this chapter; and

138 (B) Sufficient detail within the benchmarks and indicators to provide clear evidence to
139 support an objective determination by the council that an institution's progress toward achieving
140 state goals and objectives and the essential conditions for community and technical college
141 education is so deficient that implementation of the provisions of section four, article two-c of this
142 chapter is warranted and necessary.

143 (i) The commission shall confirm the compacts developed for the institutions under its
144 jurisdiction, with the exception of the exempted schools, by the boards of governors or the boards
145 of advisors pursuant to this section and consistent with the powers and duties prescribed in
146 section four, article two-a of this chapter and section one, article six of this chapter.

147 (ii) The council shall approve the compacts developed for the institutions under its
148 jurisdiction, by the boards of governors or the boards of advisors pursuant to this section and
149 consistent with the powers and duties prescribed in section four, article two-a of this chapter and
150 section one, article six of this chapter.

**§18B-1F-10. Department of commerce to study and report relating to research and
technology parks.**

1 The West Virginia Development Office shall research, investigate and make
2 recommendations relating to advancing research activities, economic development and job
3 creation relating to foundations and private entities, including the I-79 Technology Park, who focus
4 on research and job development and that receive or have received since July 1, 2012,
5 appropriation support from the State of West Virginia. The Development Office shall submit a
6 report of its investigation and findings to the Governor and the Legislature on or before December
7 31, 2017.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

**§18B-2A-3. Oversight of governing boards; promulgation of rules; data collection and
dissemination.**

1 (a) The governing boards are subject to the oversight of the commission or the council, as
2 appropriate, except that the authority of the commission relating to the exempted schools is limited
3 to the specific authorities granted under this chapter.

4 (b) The Chancellor for Higher Education and the Chancellor for Community and Technical
5 College Education, under the supervision of their respective boards, are responsible for the
6 coordination of policies, purposes and rules of the governing boards except the exempted schools
7 and shall provide for and facilitate sufficient interaction among the governing boards and between
8 the governing boards and the State Board of Education to meet the goals and objectives provided
9 in the compacts and in section one-a, article one and article one-d of this chapter.

10 (c) The governing boards and the State Board of Education shall provide all information
11 requested by the commission and the council, whether the request is made separately or jointly,
12 in an appropriate format and in a timely manner.

13 (d)(1) Each governing board shall cooperate with the West Virginia Network for
14 Educational Telecomputing (WVNET) in designing appropriate interfaces with the databases of
15 institutions under its jurisdiction and shall grant WVNET direct access to these databases.

16 (2) WVNET, on behalf of the commission or council or both, shall generate reports from
17 the data accessed for the purposes set forth in section five, article one-a and sections eight and
18 ten, article one-d of this chapter.

19 (3) All data accessed or received from an institution shall be treated in a manner consistent
20 with the privacy protections outlined in section ten, article one-d of this chapter.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the following powers and duties:

2 (a) Determine, control, supervise and manage the financial, business and education
3 policies and affairs of the state institution of higher education under its jurisdiction;

4 (b) Develop a master plan for the institution under its jurisdiction.

5 (1) The ultimate responsibility for developing and updating each master plan at the
6 institution resides with the governing board, but the ultimate responsibility for approving the final
7 version of each master plan, including periodic updates, resides with the commission or council,
8 as appropriate: *Provided*, That commission approval is not required for master plans of exempted
9 schools.

10 (2) Each master plan shall include, but is not limited to, the following:

11 (A) A detailed demonstration of how the master plan will be used to meet the goals,
12 objectives and priorities of the compact;

13 (B) A well-developed set of goals, objectives and priorities outlining missions, degree
14 offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and
15 other planning determinates and projections necessary in a plan to assure that the needs of the
16 institution's area of responsibility for a quality system of higher education are addressed;

17 (C) Documentation showing how the governing board involved the commission or council,
18 as appropriate, constituency groups, clientele of the institution and the general public in the
19 development of all segments of the master plan.

20 (3) The plan shall be established for periods of not fewer than three nor more than five
21 years and shall be revised periodically as necessary, including adding or deleting programs. The
22 commission may review and comment upon the master plan of an exempted school. The
23 commission may review, but may not approve or disapprove, additions or deletions of degree
24 programs, except as expressly provided for in subdivision (39), subsection (a), section four of
25 article one-b of this chapter.

26 (4) For the exempted schools, the master plan shall be updated at least bi-annually and
27 include the steps taken to meet the legislatively established policies contained in article one-d of
28 this chapter and reports on each of the data elements identified in article one-d of this chapter,
29 including progress that the exempted schools are making relating to retention and graduation
30 rates for resident students by organization and each college within the organization. The

exempted schools shall provide copies of their respective master plan to the Legislative Oversight Commission on Education Accountability and the commission.

(c) Develop a ten-year campus development plan in accordance with article nineteen of this chapter;

(d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan and compact, specific functions and responsibilities to achieve the goals, objectives and priorities established in articles one and one-d of this chapter to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(e) Direct the preparation of an appropriation request for the institution under its jurisdiction, which relates directly to missions, goals and projections found in the master plan and the compact;

(f) Consider, revise and submit for review and approval to the commission or council, as appropriate, an appropriation request on behalf of the institution under its jurisdiction, including the exempted schools;

(g) Review, at least every five years, all academic programs offered at the institution under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to established state goals, objectives and priorities, the master plan, the compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institution under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(h) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are

appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution is transferable to any other state institution of higher education for credit with the grade earned;

(i) Subject to article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(j) Involve faculty, students and classified employees in institution-level planning and decision making when those groups are affected;

(k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, discipline for employees at the institution under its jurisdiction: *Provided*, That any rules adopted by the commission and the council do not apply to exempted schools;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(m) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

(n) Appoint a president for the institution under its jurisdiction, subject to section six, article one-b of this chapter;

(o) Conduct written performance evaluations of the president, pursuant to section six, article one-b of this chapter;

83 (p) Employ all faculty and staff at the institution under its jurisdiction. The employees
84 operate under the supervision of the president, but are employees of the governing board;

85 (q) Submit to the commission or council, as appropriate, any data or reports requested by
86 the commission or council within the time frame set by the commission or council;

87 (r) Enter into contracts or consortium agreements with the public schools, private schools
88 or private industry to provide technical, vocational, college preparatory, remedial and customized
89 training courses at locations either on campuses of the state institutions of higher education or at
90 off-campus locations in the institution's responsibility district. To accomplish this goal, the boards
91 may share resources among the various groups in the community;

92 (s) Provide and transfer funds and property to certain corporations pursuant to section ten,
93 article twelve of this chapter;

94 (t) Delegate, with prescribed standards and limitations, the part of its power and control
95 over the business affairs of the institution to the president in any case where it considers the
96 delegation necessary and prudent in order to enable the institution to function in a proper and
97 expeditious manner and to meet the requirements of its master plan and compact. If a governing
98 board elects to delegate any of its power and control under this subsection, it shall enter the
99 delegation in the minutes of the meeting when the decision was made and shall notify the
100 commission or council, as appropriate. Any delegation of power and control may be rescinded by
101 the appropriate governing board, the commission or council, as appropriate, at any time, in whole
102 or in part, except that the commission may not revoke delegations of authority made by the
103 governing board of the exempted schools.

104 (u) Unless changed by the commission or the council, as appropriate, continue to abide
105 by existing rules setting forth standards for accepting advanced placement credit for the institution
106 under its jurisdiction. Individual departments at a state institution of higher education, with
107 approval of the faculty senate, may require higher scores on the advanced placement test than

scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(v) Consult, cooperate and coordinate with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of appropriated and nonappropriated revenue at the institution under its jurisdiction. The system shall ensure that properly submitted requests for payment are paid on or before the due date but, in any event, within fifteen days of receipt in the State Auditor's Office;

(w) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions, changes in salary or compensation and transfers at the institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms, as appropriate, which shall be submitted to the respective governing board and the Department of Administration:

(1) Not later than July 1, 2012, the Department of Administration shall make available to each governing board the option of using a standardized electronic system for these personnel transactions.

(2) The Secretary of the Department of Administration may suspend a governing board's participation in the standardized electronic system if he or she certifies to the Governor that the governing board has failed repeatedly and substantially to comply with the department's policies for administering the electronic system;

(x) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

(y) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with article nineteen of this chapter;

(z) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing board, its institution, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

(bb) A governing board under the jurisdiction of the commission may contract and pay for any supplemental employee benefit, at the governing board's discretion: *Provided*, That if such supplemental benefit program incurs institutional expense, then the board may not delegate the approval of such supplemental employee benefit program.

ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF EXEMPTED SCHOOLS.

§18B-3-1. Legislative findings, purpose; intent; definition.

(a) The Legislature finds that an effective and efficient system of doctoral-level education is vital to providing for the economic well-being of the citizens of West Virginia and for accomplishing established state goals and objectives. As the institutions that focus on one or more of the following activities: research, masters-degree granting, doctoral-granting, medical doctoral-granting, or doctor of osteopathy doctor-granting; doctoral-granting medical doctoral-granting, or doctor of osteopathy doctor-granting public universities in the state, Marshall University, West Virginia University and the School of Osteopathic Medicine are major assets to

the citizens of West Virginia and must be an integral part of any plan to strengthen and expand the economy and improve health outcomes for the citizenry.

(b) The Legislature further finds that these three institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both affordable and accessible and remain accountable to the people of West Virginia for the most efficient and effective use of scarce resources.

(c) The Legislature further finds that the exempted schools, under the direction of their respective governing boards, may manage operational governance of their institutions in an efficient and accountable manner and may best fulfill their public missions when their governing boards are given flexibility and autonomy sufficient to meet state goals, objectives and priorities established in this article, and in section one-a, article one and article one-d of this chapter.

(d) Therefore, the purposes of this article include, but are not limited to, the following:

(1) Enhancing the competitive position of the exempted schools in the current environment for research and medical professional development;

(2) Providing the governing boards of these institutions with operational flexibility and autonomy in certain areas, including tools to promote economic development and healthcare in West Virginia;

(3) Encouraging the development of research and medical expertise in areas directly beneficial to the state;

(4) Focusing the attention and resources of the governing boards on state goals, objectives and priorities to enhance the competitive position of the state and the economic, social, health, and cultural well-being of its citizens; and

(5) Providing additional autonomy and operational flexibility and assigning certain additional responsibilities to governing boards of other state institutions of higher education.

(e) The governing boards of the exempted schools each have the power and the obligation to perform functions, tasks and duties as prescribed by law.

34 (f) While the governing boards may choose to delegate powers and duties to their
35 respective presidents pursuant to subsection(s), section four, article two-a of this chapter,
36 ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West
37 Virginia for meeting the established state goals, objectives and priorities set forth in this article,
38 and in section one-a, article one and article one-d of this chapter. Therefore, grants of operational
39 flexibility and autonomy are made directly to the governing boards and are not grants of
40 operational flexibility and autonomy to the president of an institution.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

1 (a) The council shall make rules for the accreditation of community and technical colleges
2 in this state and shall determine the minimum standards for conferring degrees. The commission
3 shall make rules for the accreditation of colleges in this state except the governing boards of the
4 exempted schools shall make rules for their respective institutions, and each shall determine the
5 minimum standards for conferring degrees. The governing boards of the exempted schools shall
6 promulgate rules pursuant to the provisions of section six, article one of this chapter for the
7 accreditation of their respective institutions.

8 (b) An institution of higher education may not confer a degree on any basis of work or
9 merit below the minimum standards prescribed by the council or commission.

10 (c) With the approval of the commission and subject to subsections (e), (f) and (g) of this
11 section, governing boards of institutions which currently offer substantial undergraduate course
12 offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in
13 that discipline.

14 (d) Except as otherwise provided in this section, a charter or other instrument containing
15 the right to confer degrees of higher education status may not be granted by the State of West
16 Virginia to an institution, association or organization within the state, nor may a degree be
17 awarded, until the condition of conferring the degree first has been approved in writing by the

council or commission, as appropriate, or by the institution's governing board in the case of the exempted schools.

(e) To retain the authority to confer degrees pursuant to this section, each institution shall provide annually to the commission or council, as requested, all information the commission or council considers necessary to assess the performance of the institution and to determine whether the institution continues to meet the minimum standards for conferring degrees. This information includes, but is not limited to, the following data:

(1) All information current and future federal or state laws and regulations require the institution to report to the public, to students, to employees or to federal or state agencies;

(2) Other consumer information the commission or council considers necessary, including, but not limited to, graduation and retention rates, transfers, post-graduation placements, loan defaults and numbers and types of student complaints;

(3) A detailed explanation of financial operations including, but not limited to, policies, formulas and procedures related to calculation, payment and refund for all tuition and fees; and

(4) An assessment of the adequacy of the institution's curriculum, personnel, facilities, materials and equipment to meet the minimum standards for conferring degrees.

(f) The commission and council may conduct on-site reviews to evaluate an institution's academic standards, may conduct financial audits, or may require the institution to perform these audits and provide detailed data to the commission or council.

(g) The commission or council shall revoke an institution's authority to confer degrees when the institution's governing body, chief executive officer, or both, have done any one or more of the following:

(1) Failed to maintain the minimum standards for conferring degrees; or

(2) Willfully provided false, misleading or incomplete information to the commission or council.

(h) The commission and council each shall compile the information collected pursuant to subdivisions (e), (f) and (g) of this section and submit a report on the information to the Legislative Oversight Commission on Education Accountability annually beginning December 1, 2012. The commission and council each shall make the information and report available to the public in a form and manner that is accessible to the general public, including, but not limited to, posting on its website.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board shall purchase or acquire all materials, supplies, equipment, services and printing required for their respective needs: *Provided*, That the governing boards under the jurisdiction of the commission, including the exempted schools, are subject to subsection (d) of this section.

(b) The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with this section: *Provided*, That these rules do not apply to the exempted schools and the governing boards of the exempted schools shall adopt their own rules consistent with this section: *Provided, however*, That the joint rules shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission. The rules shall ensure that the following procedures are followed:

(1) No person is precluded from participating and making sales thereof to the council, commission or governing board except as otherwise provided in section five of this article. Providing consulting services such as strategic planning services does not preclude or inhibit the governing boards, council or commission from considering a qualified bid or response for delivery of a product or a commodity from the individual providing the services;

(2) Specifications are established and prescribed for materials, supplies, equipment, services and printing to be purchased;

18 (3) Purchase order, requisition or other forms as may be required are adopted and
19 prescribed;

20 (4) Purchases and acquisitions in such quantities, at such times and under contract, are
21 negotiated for and made in the open market or through other accepted methods of governmental
22 purchasing as may be practicable in accordance with general law;

23 (5) Bids are advertised on all purchases exceeding \$50,000 and made by means of sealed
24 or electronically submitted bids and competitive bidding or advantageous purchases effected
25 through other accepted governmental methods and practices. Competitive bids are not required
26 for purchases of \$50,000 or less.

27 (6) Notices for acquisitions and purchases for which competitive bids are being solicited
28 are posted either in the purchasing office of the specified institution involved in the purchase or
29 by electronic means available to the public at least five days prior to making the purchases. The
30 rules shall ensure that the notice is available to the public during business hours;

31 (7) Purchases are made in the open market;

32 (8) Vendors are notified of bid solicitation and emergency purchasing; and

33 (9) No fewer than three bids are obtained when bidding is required, except if fewer than
34 three bids are submitted, an award may be made from among those received.

35 (c) When a state institution of higher education submits a contract, agreement or other
36 document to the Attorney General for approval as to form as required by this chapter, the following
37 conditions apply:

38 (1) "Form" means compliance with the Constitution and statutes of the State of West
39 Virginia;

40 (2) The Attorney General does not have the authority to reject a contract, agreement or
41 other document based on the substantive provisions in the contract, agreement or document or
42 any extrinsic matter as long as it complies with the Constitution and statutes of this state;

(3) Within fifteen days of receipt, the Attorney General shall notify the appropriate state institution of higher education in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval shall identify each defect that supports the disapproval; and

(4) If the state institution elects to challenge the disapproval by filing a writ of mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards under the jurisdiction of the commission, including the exempted schools, respectively, may carry out the following actions:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) Purchase from cooperative buying groups, consortia, the federal government or from federal government contracts, or from West Virginia public institution of higher education contracts, if the materials, supplies, services, equipment or printing to be purchased is available from these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, and capital improvements, including equipment, if the rental is necessarily required by the governing board; and

(4) Use purchase cards.

(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to section six, article one of this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space, and capital improvements, including equipment, or lease-purchase agreements.

69 (f) The council, commission or each governing board may issue a check in advance to a
70 company supplying postage meters for postage used by that board, the council or commission
71 and by the state institutions of higher education under their jurisdiction.

72 (g) When a purchase is to be made by bid, any or all bids may be rejected. However, all
73 purchases based on advertised bid requests shall be awarded to the lowest responsible bidder
74 taking into consideration the qualities of the articles to be supplied, their conformity with
75 specifications, their suitability to the requirements of the governing boards, council or commission
76 and delivery terms. The preference for resident vendors as provided in section thirty-seven, article
77 three, chapter five-a of this code applies to the competitive bids made pursuant to this section.

78 (h) The governing boards, council and commission shall maintain a purchase file, which
79 shall be a public record and open for public inspection.

80 (1) After the award of the order or contract, the governing boards, council and commission
81 shall indicate upon the successful bid the following information:

82 (A) Designation as the successful bid;

83 (B) The reason any bids were rejected; and

84 (C) The reason for rejection, if the mathematical low vendor was not awarded the order or
85 contract.

86 (2) A record in the purchase file may not be destroyed without the written consent of the
87 Legislative Auditor. Those files in which the original documentation has been held for at least one
88 year and in which the original documents have been reproduced and archived on microfilm or
89 other equivalent method of duplication may be destroyed without the written consent of the
90 Legislative Auditor.

91 (3) All files, no matter the storage method, shall be open for inspection by the Legislative
92 Auditor upon request.

93 (i) The commission and council, also jointly, shall promulgate rules to prescribe
94 qualifications to be met by any person who is to be employed as a buyer at a state college and

95 university or community and technical college pursuant to this section. These rules shall require
96 that a person may not be employed as a buyer unless that person, at the time of employment,
97 has one of the following qualifications:

98 (1) Is a graduate of an accredited college or university; or

99 (2) Has at least four years' experience in purchasing for any unit of government or for any
100 business, commercial or industrial enterprise.

101 (j) Any person making purchases and acquisitions pursuant to this section shall execute
102 a bond in the penalty of \$50,000, payable to the State of West Virginia, with a corporate bonding
103 or surety company authorized to do business in this state as surety thereon, in form prescribed
104 by the Attorney General and conditioned upon the faithful performance of all duties in accordance
105 with this section and sections five through eight, inclusive, of this article and the rules of the
106 governing board and the council and commission. In lieu of separate bonds for these buyers, a
107 blanket surety bond may be obtained. The bond shall be filed with the Secretary of State and the
108 cost of the bond shall be paid from funds appropriated to the applicable governing board or the
109 council or commission.

110 (k) All purchases and acquisitions shall be made in consideration and within limits of
111 available appropriations and funds and in accordance with applicable provisions of article two,
112 chapter five-a of this code relating to expenditure schedules and quarterly allotments of funds.
113 Notwithstanding any other provision of this code to the contrary, only those purchases exceeding
114 the dollar amount for competitive sealed bids in this section are required to be encumbered. Such
115 purchases may be entered into the state's centralized accounting system by the staff of the
116 commission, council or governing boards to satisfy the requirements of article two, chapter five-a
117 of this code to determine whether the amount of the purchase is within the quarterly allotment of
118 the commission, council or governing board, is in accordance with the approved expenditure
119 schedule and otherwise conforms to the article: *Provided, That*, notwithstanding the foregoing

provisions of this subsection or any other provision of this code to the contrary, purchases by exempted schools are not required to be encumbered.

(l) The governing boards, council or commission may make requisitions upon the State Auditor for a sum to be known as an advance allowance account, not to exceed five percent of the total of the appropriations for the governing board, council or commission, and the State Auditor shall draw a warrant upon the Treasurer for those accounts. All advance allowance accounts shall be accounted for by the applicable governing board or the council or commission once every thirty days or more often if required by the State Auditor.

(m) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the Attorney General. A contract which requires approval as to form by the Attorney General is considered approved if the Attorney General has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the Attorney General and do not make substantive changes in the terms and conditions of the contract do not require approval as to form by the Attorney General. The Attorney General shall make a list of those changes which he or she considers to be substantive and the list, and any changes to the list, shall be published in the State Register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the State Auditor. If requested to do so, the governing boards, council or commission shall make all contracts available for inspection by the State Auditor. The governing board, council or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

145 (n) If the governing board, council or commission purchases or contracts for materials,
146 supplies, equipment, services and printing contrary to sections four through seven, inclusive, of
147 this article or the rules pursuant to this article, the purchase or contract is void and of no effect.

148 (o) A governing board or the council or commission, as appropriate, may request the
149 director of purchasing to make available the facilities and services of that department to the
150 governing boards, council or commission in the purchase and acquisition of materials, supplies,
151 equipment, services and printing. The director of purchasing shall cooperate with that governing
152 board, council or commission, as appropriate, in all such purchases and acquisitions upon that
153 request.

154 (p) Each governing board or the council or commission, as appropriate, may permit
155 affiliated organizations, state institutions of higher education, or private institutions of higher
156 education to join as purchasers on purchase contracts for materials, supplies, services and
157 equipment entered into by that governing board or the council or commission. An affiliated
158 organization, state institution of higher education or private institution desiring to join as purchaser
159 on purchase contracts shall file with that governing board or the council or commission, as
160 appropriate, an affidavit signed by the president or designee of the affiliated organization, state
161 institution of higher education, or private institution requesting that it be authorized to join as
162 purchaser on purchase contracts of that governing board or the council or commission, as
163 appropriate. The affiliated organization, state institution of higher education or private institution
164 shall agree that it is bound by such terms and conditions as that governing board or the council
165 or commission may prescribe and that it will be responsible for payment directly to the vendor
166 under each purchase contract.

167 (q) Notwithstanding any other provision of this code to the contrary, the governing boards,
168 council and commission, as appropriate, may make purchases from cooperative buying groups,
169 consortia, the federal government or from federal government contracts if the materials, supplies,

170 services, equipment or printing to be purchased is available from that source, and purchasing
171 from that source would be the most financially advantageous manner of making the purchase.

172 (r) An independent performance audit of all purchasing functions and duties which are
173 performed at any state institution of higher education shall be performed at least once in each
174 three-year period. The Joint Committee on Government and Finance shall require a performance
175 audit and the governing boards, council and commission, as appropriate, are responsible for
176 paying the cost of the audit from funds appropriated to the governing boards, council or
177 commission.

178 (1) The governing board shall provide for independent performance audits of all
179 purchasing functions and duties on its campus at least once in each three-year period.

180 (2) Each audit shall be inclusive of the entire time period that has elapsed since the date
181 of the preceding audit.

182 (3) Copies of all appropriate documents relating to any audit performed by a governing
183 board shall be furnished to the Joint Committee on Government and Finance and the Legislative
184 Oversight Commission on Education Accountability within thirty days of the date the audit report
185 is completed.

186 (s) The governing boards shall require each institution under their respective jurisdictions
187 to notify and inform every vendor doing business with that institution of section fifty-four, article
188 three, chapter five-a of this code, also known as the Prompt Pay Act of 1990.

189 (t) Consultant services, such as strategic planning services, do not preclude or inhibit the
190 governing boards, council or commission from considering any qualified bid or response for
191 delivery of a product or a commodity because of the rendering of those consultant services.

192 (u) Purchasing card use may be expanded by the council, commission and state
193 institutions of higher education pursuant to this subsection.

194 (1) The council and commission jointly shall establish procedures to be implemented by
195 the council, commission and any state college and university or community and technical college

using purchasing cards. The governing boards of the exempted schools shall establish procedures to be implemented by their respective institutions. The procedures shall ensure that each meets the following conditions:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) Notwithstanding any other provision of this code to the contrary, the council, commission and any institution authorized pursuant to subdivision (3) of this subsection may use purchasing cards for the following purposes:

(A) Payment of travel expenses directly related to the job duties of the traveling employee, including, but not limited to, fuel and food; and

(B) Payment of any routine, regularly scheduled payment, including, but not limited to, utility payments and real property rental fees.

(3) The commission and council each shall evaluate the capacity of each state college and university and community and technical college under its jurisdiction for complying with the procedures established pursuant to subdivision (2) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to that subdivision for any state college and university and community and technical college it determines has the capacity to comply.

§18B-5-6. Other code provisions relating to purchasing and design-build procurement not controlling; exceptions; criminal provisions and penalties; financial interest of governing boards, etc.; receiving anything of value from interested party and penalties therefor; application of bribery statute.

(a) The provisions of article three, chapter five-a of this code and article twenty-two-a, chapter five of this code do not control or govern design-build procurement or the purchase,

3 acquisition or other disposition of any equipment, materials, supplies, services or printing by the
4 commission or the governing boards, except as provided in sections four through seven, inclusive,
5 of this article. Sections twenty-nine, thirty and thirty-one, article three, chapter five-a of this code
6 apply to all purchasing activities of the commission and the governing boards.

7 (b) Notwithstanding any provision of this code to the contrary, state institutions of higher
8 education, through their governing boards, may enter into design-build contracts and are not
9 subject to the provisions of article twenty-two-a, chapter five of this code and may also utilize
10 other commonly accepted methods of procurement and contracting for construction projects:
11 *Provided*, That such state institution of higher education meets the following criteria:

12 (1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified
13 administrator; and

14 (2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the
15 International Facility Management Association, or employs at least one Project Management
16 Professional (PMP) as certified by the Project Management Institute.

17 (c) Neither the commission, the governing boards, nor any employee of the commission
18 or governing boards may be financially interested, or have any beneficial personal interest,
19 directly or indirectly, in the purchase of any equipment, materials, supplies, services or printing,
20 nor in any firm, partnership, corporation or association furnishing them, except as may be
21 authorized by the provisions of chapter six-b of this code. Neither the commission, the governing
22 boards nor any employee of the commission or governing boards may accept or receive directly
23 or indirectly from any person, firm or corporation, known by the commission, governing boards or
24 such employee to be interested in any bid, contract or purchase, by rebate, gift or otherwise, any
25 money or other thing of value whatsoever or any promise, obligation or contract for future reward
26 or compensation, except as may be authorized by the provisions of chapter six-b of this code.

27 A person who violates any of the provisions of this section is guilty of a misdemeanor and,
28 upon conviction thereof, shall be imprisoned in jail not less than three months nor more than one

29 year, or fined not less than \$50 nor more than \$1,000, or both imprisoned and fined, in the
30 discretion of the court. Any person who violates any provisions of this section by receiving money
31 or other thing of value under circumstances constituting the crime of bribery under the provisions
32 of section three, article five-a, chapter sixty-one of this code shall, upon conviction of bribery, be
33 punished as provided in section nine of said article.

**§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other
unneeded materials.**

1 (a) The commission, the council and the governing boards shall dispose of obsolete and
2 unusable equipment, surplus supplies and other unneeded materials, either by transfer to other
3 governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The
4 commission, the council and each governing board shall adopt rules governing and controlling
5 the disposition of all such equipment, supplies and materials. The rules shall provide for
6 disposition of the equipment, supplies and materials as sound business practices warrant under
7 existing circumstances and conditions and for adequate prior notice to the public of the
8 disposition.

9 (b) The commission, council or governing board, as appropriate, shall report biannually to
10 the Legislative Auditor all sales of commodities made during the preceding biennium. The report
11 shall include a description of the commodities sold, the name of the buyer to whom each
12 commodity was sold, the price paid by the buyer.

13 (c) The proceeds of sales or transfers shall be deposited in the state treasury to the credit
14 on a pro rata basis of the fund or funds from which the purchase of the particular commodities or
15 expendable commodities was made. The commission, council or governing board, as appropriate,
16 may charge and assess fees reasonably related to the costs of care and handling with respect to
17 the transfer, warehousing, sale and distribution of state property that is disposed of or sold
18 pursuant to the provisions of this section.

(d) Notwithstanding the provisions of this section, the commission, council or a governing board may donate equipment, supplies and materials with the approval of the commission, council or governing board or their designee, as appropriate to any not for profit entity to promote public welfare.

§18B-5-9. Higher education fiscal responsibility.

(a) The governing boards shall ensure the fiscal integrity of their operations using best business and management practices.

(1) The practices include at least the following:

(A) Complying with Generally Accepted Accounting Principles of the Governmental Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing Standards of the Government Accountability Office (GAGAS);

(B) Operating without material weakness in internal controls as defined by GAAP, GAGAS and, where applicable, the Office of Management and Budget (OMB) Uniform Guidance Audit requirements;

(C) Maintaining annual audited financial statements with an unqualified opinion;

(D) Preparing annual audited financial statements as coordinated and directed by the commission and council, respectively, and as the commission requires to complete the higher education fund audit;

(E) Maintaining quarterly financial statements certified by the chief financial officer of the institution; and

(F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets of Sarbanes-Oxley as best practices.

(2) Each governing board and any affiliated research corporation shall comply with the OMB Uniform Guidance Audit requirements and are exempt from section fourteen, article four, chapter twelve of this code.

21 (3) Within thirty days of the completion of the financial audit report, the governing boards
22 shall furnish to the commission or council, respectively, copies of the annual audited financial
23 statements.

24 (b) The commission and council, each, shall ensure the fiscal integrity of any electronic
25 process conducted at its offices and by the governing boards under its respective jurisdiction by
26 applying best business and management practices.

27 (c) To the maximum extent practicable, each higher education organization shall provide
28 for its employees to receive their wages via electronic transfer or direct deposit.

29 (d) Notwithstanding any other provision of this code to the contrary, a purchasing card
30 may be used by the council, the commission or a governing board of a state institution of higher
31 education to make any payment authorized by the Auditor, including regular routine payments
32 and travel and emergency payments. Payments are set at an amount to be determined by the
33 Auditor.

34 (1) Subject to approval of the Auditor, an emergency payment and a routine, regularly
35 scheduled payment, including, but not limited to, utility payments, contracts and real property
36 rental fees, may exceed this limit by an amount to be determined by the Auditor.

37 (2) The council, commission and a governing board of a state institution of higher
38 education may use a purchasing card for travel expenses directly related to the job duties of the
39 traveling employee. Where approved by the Auditor, the expenses may exceed \$5,000 by an
40 amount to be determined by the Auditor. Traveling expenses may include registration fees and
41 airline and other transportation reservations, if approved by the president of the institution.
42 Traveling expenses may include purchases of fuel and food.

43 (3) The commission, council, and governing boards each shall maintain one purchasing
44 card for use only in a situation declared an emergency by the appropriate chancellor or the
45 institution's president. Emergencies may include, but are not limited to, partial or total destruction
46 of a facility; loss of a critical component of utility infrastructure; heating, ventilation or air condition

failure in an essential academic building; loss of campus road, parking lot or campus entrance; a technology breach; or a local, regional, or national emergency situation that has a direct impact on the campus.

(e) Notwithstanding section ten-f, article three, chapter twelve of this code, or any other provision of this code or law to the contrary, the Auditor shall accept any receiving report submitted in a format utilizing electronic media. The Auditor shall conduct any audit or investigation of the council, commission or governing board at its own expense and at no cost to the council, commission or governing board.

(f) The council and the commission each shall maintain a rule in accordance with article three-a, chapter twenty-nine-a of this code. The rule shall provide for governing boards individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage:

- (1) Bulk purchasing;
- (2) Reverse bidding;
- (3) Electronic marketplaces; and
- (4) Electronic remitting.

(g) Each governing board may establish a consortium with at least one other governing board, in the most cost-efficient manner feasible, to consolidate the following operations and student services:

- (1) Payroll operations;
- (2) Human resources operations;
- (3) Warehousing operations;
- (4) Financial transactions;
- (5) Student financial aid application, processing and disbursement;
- (6) Standard and bulk purchasing; and

(7) Any other operation or service appropriate for consolidation as determined by the council or commission.

(h) A governing board may charge a fee to the governing board of each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service.

(i) A governing board may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(j) Each governing board shall strive to minimize its number of low-enrollment sections of introductory courses. To the maximum extent practicable, governing boards shall use distance learning to consolidate the course sections. The council and commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.

(k) A governing board shall use its natural resources and alternative fuel resources to the maximum extent feasible. The governing board:

(1) May supply the resources for its own use and for use by the governing board of any other institution;

(2) May supply the resources to the general public at fair market value;

(3) Shall maximize all federal or grant funds available for research regarding alternative energy sources; and

(4) May develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(l) Any cost-savings realized or fee procured or retained by a governing board pursuant to this section is retained by the governing board.

(m) Each governing board is authorized, but not required, to implement subsections (f), (g) and (h) of this section.

If a governing board elects to implement subsection (g) of this section, the following conditions apply:

(1) The governing board makes the determination regarding any additional operation or service which is appropriate for consolidation without input from the council or commission;

(2) The governing board sets the fee charged to the governing board of the institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service and is not subject to approval by the council or commission; and

(3) The governing board may not implement this subdivision in a manner which supersedes the requirements established in section twelve, article three-c of this chapter.

(n) The governing boards of the exempted schools, respectively, each shall promulgate a rule on purchasing procedures in accordance with section six, article one of this chapter.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees for each academic term for the different classes or categories of students enrolling at the state institution of higher education under its jurisdiction, including the fixing of different tuition and fees for online course delivery, and may include among the tuition and fees any one or more of the following as defined in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) A governing board may establish a single special revenue account for each or all of the following classifications of fees:

(1) All tuition and required educational and general fees collected;

(2) All auxiliary and auxiliary capital fees collected; and

13 (3) All required educational and general capital fees collected to support existing
14 systemwide and institutional debt service and future systemwide and institutional debt service,
15 capital projects and campus renewal for educational and general facilities.

16 (4) Subject to any covenants or restrictions imposed with respect to revenue bonds
17 payable from the accounts, a governing board may expend funds from each special revenue
18 account for any purpose for which funds were collected within that account regardless of the
19 original purpose for which the funds were collected.

20 (5) If a governing board of an Exempted School establishes a single special revenue
21 account for all the foregoing classifications of fees in this subsection, the governing board must
22 account for each classification of fee separately in their internal accounting system.

23 (c) The purposes for which tuition and fees may be expended include, but are not limited
24 to, health services, student activities, recreational, athletic and extracurricular activities.
25 Additionally, tuition and fees may be used to finance a student's attorney to perform legal services
26 for students in civil matters at the institutions. The legal services are limited to those types of
27 cases, programs or services approved by the president of the institution where the legal services
28 are to be performed.

29 (d) By October 1, 2011, the commission and council each shall propose a rule for
30 legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to
31 govern the fixing, collection and expenditure of tuition and other fees by the governing boards
32 under their respective jurisdictions.

33 (e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered
34 in the minutes of the meeting of the appropriate governing board and the board shall file with the
35 commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the
36 schedule and changes.

37 (f) The governing boards shall establish the rates to be charged full-time students, as
38 defined in section one-b of this article, who are enrolled during a regular academic term. A

governing board shall require by rule all fees be due not later than the end of the academic term, and shall provide for appropriate measures to provide for collections of fees past due.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(3) The governing boards may establish rates applicable to tuition and fees for online course delivery without regard to the limitations contained in this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student's finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis whether the finances of a student are affected adversely.

(4) A governing board may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution's elected student government. The fee may not be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rules proposed by the commission and council pursuant to this section. The tuition rules shall address the following areas:

(1) Providing a basis for establishing nonresident tuition and fees;

(2) Allowing governing boards to charge different tuition and fees for different programs;

(3) Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions: *Provided*, That the governing boards for the exempted schools may authorize a mandatory auxiliary fee without seeking approval of the commission:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below the senior level at the institution or the Legislature before becoming effective;

(B) Increases may not exceed previous state subsidies by more than ten percent;

(C) The fee may be used only to replace existing state funds subsidizing auxiliary services such as athletics or bookstores;

(D) If the fee is approved, the amount of the state subsidy shall be reduced annually by the amount of money generated for the institution by the fees. All state subsidies for the auxiliary services shall cease five years from the date the mandatory auxiliary fee is implemented;

(4) Establishing methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for students in all

community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(j) A penalty may not be imposed by the commission or council upon any governing board based upon the number of nonresidents who attend the institution unless the commission or council determines that admission of nonresidents to any institution or program of study within the institution is impeding unreasonably the ability of resident students to attend the institution or participate in the programs of the institution. The governing boards shall report annually to the commission or council on the numbers of nonresidents and any other enrollment information the commission or council may request.

(k) Tuition and fee increases of the governing boards, except the exempted schools, are subject to rules adopted by the commission and council pursuant to this section and in accordance with article three-a, chapter twenty-nine-a of this code. The commission or council, as appropriate, shall examine individually each request from a governing board, including the exempted schools, for an increase and make its determinations as follows:

(1) A tuition and fee increase for resident students proposed by a governing board requires the approval of the commission or council, as appropriate, for any tuition and fee increase greater than ten percent in any one year or where the increase would be more than seven percent per year, averaged over a rolling three year period calculated by averaging the proposed increase with the increase for the immediate two previous years;

(2) In determining whether to approve or deny a governing board's request for a tuition and/or fee increase for resident students greater than the increases granted pursuant to subdivision (1) of this subsection, the commission or council shall determine the progress the governing board has made toward meeting the conditions outlined in this subsection and shall make this determination the predominate factor in its decision. The commission or council shall consider the degree to which each governing board has met the following conditions:

(A) Maximizes resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Consistently achieves the benchmarks established in the compact pursuant to article one-d of this chapter or the master plan for exempted schools in article two-a of this chapter, including the provisions of article one-d required in the master plan;

(C) Continuously pursues the statewide goals for post-secondary education;

(D) Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the Southern Regional Education Board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nationwide inflationary benchmarks.

(3) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(4) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.

§18B-10-1c. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) "Auxiliary capital fees" means charges levied on students to support debt service, capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

(b) "Auxiliary fees" means charges levied on all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominately to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers;

(c) "Full-time graduate student" means a graduate student who is enrolled for nine or more credit hours in a regular term;

(d) "Full-time undergraduate student" means an undergraduate student who is enrolled for twelve or more credit hours in a regular term;

(e) "Required educational and general capital fees" means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, capital projects and campus maintenance and renewal for an institution's educational and general educational facilities; and

(f) "Tuition and required educational and general fees" means:

(1) Charges levied on all students of that class or category to support educational and general program services; and

(2) Optional charges levied for education and general services collected only from students using the service or from students for whom the services are made available.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

6 (b) *Fees for full-time students.* — The governing boards shall fix capital and auxiliary
7 capital fees for full-time students at each state institution of higher education per semester. For
8 institutions under its jurisdiction, a governing board may fix the fees at higher rates for students
9 who are not residents of this state.

10 (c) *Fees for part-time students.* — For all part-time students and for all summer school
11 students, the governing boards shall impose and collect the fees in proportion to, but not
12 exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same
13 manner as any other fee collected at state institutions of higher education.

14 (d) There is continued in the State Treasury a special capital improvements fund and
15 special auxiliary capital improvements fund for each state institution of higher education and the
16 commission into which shall be paid all proceeds, respectively, of the following:

17 (1) The capital and auxiliary capital fees collected from students at all state institutions of
18 higher education pursuant to this section; and

19 (2) The fees collected from the students pursuant to section one of this article. The fees
20 shall be expended by the commission and governing boards for the payment of the principal of or
21 interest on any revenue bonds issued by the board of regents or the succeeding governing boards
22 for which the fees were pledged prior to the enactment of this section.

23 (e) The governing boards may make expenditures from any of the special capital
24 improvements funds or special auxiliary capital improvement funds established in this section to
25 finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other
26 grants or contributions, for any one or more of the following projects:

27 (1) The acquisition of land or any rights or interest in land;

28 (2) The construction or acquisition of new buildings;

29 (3) The renovation or construction of additions to existing buildings;

30 (4) The acquisition of furnishings and equipment for the buildings; and

31 (5) The construction or acquisition of any other capital improvements or capital education
32 facilities at the state institutions of higher education, including any roads, utilities or other
33 properties, real or personal, or for other purposes necessary, appurtenant or incidental to the
34 construction, acquisition, financing and placing in operation of the buildings, capital improvements
35 or capital education facilities, including student unions, dormitories, housing facilities, food service
36 facilities, motor vehicle parking facilities and athletic facilities.

37 (f) The commission, when singly or jointly requested by the council or governing boards,
38 periodically may issue revenue bonds of the state as provided in this section to finance all or part
39 of the purposes and pledge all or any part of the moneys in the special funds for the payment of
40 the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any
41 pledge of the special funds for the revenue bonds shall be a prior and superior charge on the
42 special funds over the use of any of the moneys in the funds to pay for the cost of any of the
43 purposes on a cash basis. Any expenditures from the special funds, other than for the retirement
44 of revenue bonds, may be made by the commission or governing boards only to meet the cost of
45 a predetermined capital improvements program for one or more of the state institutions of higher
46 education, in the order of priority agreed upon by the governing board or boards and the
47 commission and for which the aggregate revenue collections projected are presented to the
48 Governor for inclusion in the annual budget bill, and are approved by the Legislature for
49 expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the
50 ten-year campus development plan approved by the governing board pursuant to section three,
51 article nineteen of this chapter.

52 (g) The revenue bonds periodically may be authorized and issued by the commission or
53 governing boards to finance, in whole or in part, the purposes provided in this section in an
54 aggregate principal amount not exceeding the amount which the commission determines can be
55 paid as to both principal and interest and reasonable margins for a reserve therefor from the
56 moneys in the special funds.

(h) The issuance of the revenue bonds by schools other than the exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds and by the commission. The revenue bonds issued by schools other than the exempted schools shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is in the best interests of the state.

(i) The issuance of the revenue bonds by exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding one hundred years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds. The revenue bonds shall be signed by the Governor and the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chair of the

appropriate governing boards. The revenue bonds shall be sold in the manner the governing board determines is in the best interests of the state.

(j) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under this section; as to the maintenance or revision of the amounts of the fees; as to the extent to which swap agreements, as defined in subsection (h), section two, article two-g, chapter thirteen of this code shall be used in connection with the revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the commission considers necessary or desirable, if any, under which the fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of the revenue bonds.

(k) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment of the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(l) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. The special revenue fund in the State Treasury known as the Community and Technical College Capital Improvement Fund into which shall be deposited the amounts specified in subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code is continued. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by the commission for community and technical college capital improvements or used by the council on a cash basis as provided under subdivision (4), subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code for community and technical college capital improvements or capital projects.

(m) Funding of systemwide and campus-specific revenue bonds under any other section of this code is continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(n) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the Governor and:

(1) approved by the governing board for revenue bonds issued by the exempted schools;

(2) confirmed by the commission, for revenue bonds issued by institutions under the jurisdiction of the commission, or

(3) approved by the council and the commission, for revenue bonds issued by institutions under the jurisdiction of the council.

(o) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(p) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to or after the effective date of this section shall be transferred to

the commission in a manner prescribed by the commission. The commission may transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section, the fees shall remain in effect in amounts not less than the amounts in effect as of that date, until the revenue bonds payable from any of the fees have been paid or the pledge of the fees is otherwise legally discharged.

§18B-10-16. Disposition of funds in State Treasury.

Except as may be provided for in any bond resolution in effect, funds in the State Treasury heretofore collected from any of the sources defined in the foregoing sections shall remain in the State Treasury for use by the institution where collected. Any interest revenue generated by a special student fee account shall only be expended at or for the institution where such fee was collected. Exempted schools may transfer and deposit all fees and funds collected under this article into a single special revenue account: *Provided*, That if the governing board of an exempted school does transfer and deposit all such fees and funds into a single special revenue account, the governing board shall account for each classification of fees and funds separately in their internal accounting system.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-1. Legislative findings and intent.

1 (a) The Legislature makes the following findings:

2 (1) State institutions of higher education vary widely in the conditions of their facilities
3 infrastructure.

4 (2) State institutions of higher education vary widely in their ability to incur debt for capital
5 improvements. It is nearly impossible for community and technical colleges and some smaller
6 baccalaureate institutions to fund significant capital improvements in the absence of state funding.

7 (3) A student enrolled at a community and technical college that previously was
8 administratively linked to another state institution of higher education pays substantially higher
9 tuition and mandatory fees than a student enrolled at a freestanding community and technical
10 college. This cost discrepancy is due in large part to the significantly higher capital fees charged
11 to these students to pay debt service for capital improvements.

12 (4) The substantial amount of capital fees that students must pay at the institution level
13 contributes significantly to the poor grade the state receives in the category of "Affordability" in
14 *Measuring Up: The National Report Card on Higher Education*.

15 (5) It is beneficial for the state to provide additional ongoing capital funding to reduce the
16 obligation of students and parents to bear the cost of higher education capital improvements and
17 facilities maintenance.

18 (6) West Virginia is one of only a few states that does not address higher education capital
19 improvements and facilities maintenance needs through a statewide plan.

20 (7) State funding for capital improvements should align with state and system higher
21 education goals, objectives and priorities as set forth in article one-d of this chapter.

22 (8) State capital funding should focus primarily on educational and general capital
23 improvements, not auxiliary capital improvements.

24 (9) Renovations of existing buildings sometimes deserve greater consideration for state
25 funding than new construction. However, new construction may deserve greater consideration

26 than renovation when a state or system goal, objective or priority is implicated, as well as when
27 renovation would be financially inefficient.

28 (10) As the Legislature increases funding for new educational and general capital
29 improvements and major renovations, and supplants existing educational and general debt,
30 institutions should target funds for maintenance and deferred maintenance needs.

31 (11) If community and technical colleges are to keep the cost of education affordable, they
32 cannot be expected to fund maintenance obligations entirely from student capital fees.

33 (12) The commission and council should scrutinize carefully all requests from institutions
34 to incur additional debt in order to determine their effect on institution debt capacity and the impact
35 that incurring additional debt will have on students.

36 (13) State institutions of higher education ultimately should target adequate state capital
37 contributions and capital fees to address maintenance and deferred maintenance needs.

38 (14) Until institutions are able to generate sufficient revenue to address maintenance and
39 deferred maintenance needs, the Legislature should provide periodic funding to assist institutions
40 in addressing these needs. Funding priority should be given to projects that address building code
41 requirements and critical maintenance needs.

42 (15) In supporting future high priority capital needs, the Legislature, commission and
43 council should not reward institutions with state funding if they neglect to address facilities
44 maintenance needs or do not prudently manage their capital resources.

45 (16) Once an institution's capital development plan has been approved by the governing
46 board and confirmed by the commission or approved by the council, as appropriate, project
47 priorities should not change significantly from year to year.

48 (17) Commission and council staff should participate in managing capital projects at
49 smaller institutions if the smaller institution lacks the expertise necessary to plan, design and
50 complete projects at or under budget.

(b) The intent of the Legislature relating to this article includes, but is not limited to, the following:

(1) Dedicated state funding sources shall be designated to finance construction and renovation of educational and general facilities at state institutions of higher education from time to time;

(2) Capital project lists submitted by institutions to the commission or council, as appropriate, and capital project lists submitted by the commission and council to the state budget office, Legislative Oversight Commission on Education Accountability, and Joint Committee on Government and Finance for consideration for state funding shall be reasonable requests that align with state and system goals, objectives and priorities and ones which reasonably could be funded if approved;

(3) As the Legislature increases its responsibility for financing new educational and general facilities and major renovations, the commission, council and institutions shall ensure that sufficient capital revenues are available for maintenance and that the facilities are maintained adequately;

(4) Ongoing state funding shall be dedicated to supplement capital fees available for maintenance at community and technical colleges; and

(5) Once a system capital plan is in place, institutions shall set aside adequate funding annually to ensure that ongoing facilities maintenance needs are met.

§18B-19-3. System capital development planning.

(a) By December 31, 2017, the commission and council, jointly or separately, shall develop a system capital development oversight policy for approval by the Legislative Oversight Commission on Education Accountability. At a minimum the initial oversight policy shall include the following:

(1) System goals for capital development;

(2) An explanation of how system capital development goals align with state goals, objectives and priorities established in articles one and one-d of this chapter and with system master plans;

(3) A description of how the commission and council will prioritize their recommendations for capital projects for state funding based on their ability to further state goals, objectives and priorities and system capital development goals;

(4) A building renewal formula to calculate a dollar benchmark that shall be collected annually and invested in facilities to minimize deferred maintenance and to provide the commission and council objective information to determine if the investments in maintenance are occurring;

(5) A process for governing boards to follow in developing and submitting campus development plans to the commission or council, as appropriate, for approval by the council or for confirmation by the commission, as appropriate; and

(6) A process for governing boards to follow to ensure that sufficient revenue is generated for and applied toward facilities maintenance.

(b) The system capital development plan shall be developed in consultation with governing boards and appropriate institution staff. Before approving the capital development plan, the commission and council shall afford interested parties an opportunity to comment on the plan through a notice-and-comment period of at least thirty days.

(c) The commission and council shall update its system capital development plan at least once in each ten-year period.

§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate, for approval by the council or confirmation by the commission, as appropriate, except that confirmation is not required by the commission for the exempted schools. A campus development plan shall be adopted by each

governing board for a ten-year period and shall align with criteria specified in the following sources:

- (1) The system capital development oversight policy;
- (2) The institution's approved master plan and compact; and
- (3) The current campus development plan objectives.

(b) Campus development plans are intended to be aspirational; however, an institution's plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within which the institution operates. At a minimum the campus development plan shall include the following:

- (1) The governing board's development strategy;
- (2) An assessment of the general condition and suitability of buildings and facilities, including deferred maintenance, life-safety and building code issues, ADA requirements and energy efficiency;
- (3) An assessment of the impact of projected enrollment and demographic changes on building and facility needs;
- (4) A comprehensive list of major deferred maintenance projects, individually exceeding \$75,000 in cost, that need to be addressed for each campus by building or facility including an estimated cost for each;
- (5) An analysis as to all buildings and facilities as to the need for renovations, additions, demolition or any combination thereof;
- (6) A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking and landscaping;
- (7) An analysis of telecommunications, utilities and other infrastructure improvements that are needed;
- (8) A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

(9) A list of proposed new facilities and building sites;

(10) A list of capital projects in priority order;

(11) Estimates of the timing, phasing and projected costs associated with individual projects;

(12) If an institution has multiple campuses in close proximity, a delineation of how the campuses should interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

(13) A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation; and

(14) Any other requirement established by the commission and council in the rules required by section seventeen of this article.

(c) Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

(d) Not later than the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission confirms or council approves, as appropriate, the development plan of a governing board the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

(e) Each governing board shall update its campus development plan at least once during each ten-year period and any update is subject to the confirmation of the commission or approved by the council, as appropriate.

(f) Except for the governing boards of the exempted schools, a governing board may not implement a campus development plan or plan update that has not been confirmed by the commission or approved by the council, as appropriate.

18B-19-5. Capital appropriation requests.

1 (a) The commission and council each shall submit a prioritized capital appropriation
2 request annually to the state budget office as required by article two, chapter eleven-b of this code
3 consisting of major capital projects and maintenance projects.

4 (b) The commission and council each shall develop a process for governing boards to
5 follow in submitting a list of major educational and general capital projects so that a prioritized
6 major capital project list, prepared by the commission or council, as appropriate, may be
7 submitted to the state budget office by the applicable deadline.

8 (1) The governing board's major capital project list shall include the following items:

9 (A) Projects identified in the governing board's campus development plan or plans. A
10 project may not be included which is not contained in the plan confirmed by the commission or
11 approved by the council, as appropriate, except when extraordinary circumstances otherwise
12 warrant;

13 (B) A current estimate of each project's estimated cost accounting for inflation since
14 completion of the campus development plan. The size and scope of the project may not change
15 unless the campus development plan has been updated and approved by the council or confirmed
16 by the commission, as appropriate, as provided in section three of this article; and

17 (C) Any additional information required to be provided by the commission, council or state
18 budget office.

19 (2) The commission and council each shall rank the major capital projects submitted by
20 the governing boards according to priority consistent with the criteria outlined in the system capital
21 development plan. The council and commission may not submit to the state budget office a
22 request for an institution which the commission or council determines reasonably could not secure
23 funding through the appropriation process during the following fiscal year.

24 (c) The commission and council each shall develop a process for governing boards to
25 follow in submitting a list of major maintenance projects so that a prioritized maintenance project

list, prepared by the commission or council, as appropriate, may be submitted to the state budget office by the applicable deadline.

(1) Annually, the commission and council, as appropriate, shall provide each governing board a recommended building renewal calculation that identifies the funds that should be collected and invested in its buildings and facilities during the next fiscal year to maintain them and minimize deferred maintenance.

(2) As soon as it receives the building renewal calculation, each governing board shall make realistic revenue estimates of the funds available for maintenance projects from educational and general capital fees, from auxiliary and auxiliary capital fees and from any other revenue that may be used for maintenance projects, as well as any anticipated reserves. The governing boards then shall identify and submit proposed major maintenance projects, consistent with its campus development plan or plans, to be funded from these revenues.

(3) The commission and council each shall report to the Legislative Oversight Commission on Education Accountability on the revenue available to governing boards for educational and general and auxiliary maintenance projects, as well as any shortfalls based on building renewal formula calculation, and major maintenance projects that institutions propose to undertake during the upcoming fiscal year.

(4) The commission shall work with institutions under its jurisdiction to ensure that adequate funds are generated to fund maintenance and build adequate reserves from educational and general and auxiliary capital fees and other revenue consistent with the building renewal formula. The Legislature recognizes that it may take several years for this to be accomplished fully.

(5) The council shall work with the Legislature and institutions under its jurisdiction to ensure that a combination of appropriated and nonappropriated revenue is available to fund maintenance and build adequate reserves at community and technical colleges consistent with the building renewal formula.

§18B-19-6. Capital project financing.

(a) The commission and governing boards, jointly or singly, may issue revenue bonds for capital project financing in accordance with section eight, article ten of this chapter.

(b) A governing board may seek funding for and initiate construction or renovation work for major projects only if contained in a campus development plan approved by the council or confirmed by the Commission: *Provided*, That this subsection (b) shall not apply to the governing boards of the exempted schools.

(c) A governing board may fund capital improvements on a cash basis, through bonding or through notes or another financing method that is approved by the commission and by the council, if appropriate. *Provided*, That the exempted schools shall not be required to get the approval of the commission.

(1) If the cost of an improvement project for any institution under the jurisdiction of the council, exceeds \$1 million, the governing board first shall obtain the approval of the council, as appropriate. If the cost of an improvement project at an institution under the jurisdiction of the commission, other than the exempted schools, exceeds \$3 million, the governing board shall first obtain the approval of the commission.

(2) Prior to approving bonding or any alternative financing method for any institution other than the exempted schools, the commission, and council if appropriate, shall evaluate the following issues:

(A) The institution's debt capacity and ability to meet the debt service payments for the full term of the financing;

(B) The institution's capacity to generate revenue sufficient to complete the project;

(C) The institution's ability to fund ongoing operations and maintenance;

(D) The impact of the financing arrangement on students; and

(E) Any other factor considered appropriate.

(d) A governing board shall notify the Joint Committee on Government and Finance at least thirty days before beginning construction or renovation work on any capital project in excess of \$1 million.

(e) The commission may pledge all or part of the fees of any or all state institutions of higher education as part of a system bond issue.

(f) Any fee or revenue source pledged prior to the effective date of this section for payment of any outstanding debt remains in effect until the debt is fully repaid or refunded.

§18B-19-7. Capital project management.

(a) The commission, council and governing boards, as responsibility is otherwise assigned herein, shall ensure that capital funds are spent appropriately and that capital projects are managed effectively. Project management shall be conducted in all respects according to sound business practices and applicable laws, and rules.

(b) The commission shall employ a sufficient number of competent facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed. By December 31, 2011, and continuing thereafter, at least one employee shall be Leadership in Energy and Environmental Design (LEED) certified.

(c) A governing board under the jurisdiction of the commission is exempt from the provisions of subsections (e) and (f) of this section seven of this article, and its capital projects management shall be governed by the provisions of subsection (d) of this section regardless of the rolling five year construction expenditures, if it meets each of the following criteria:

(1) Employs at least one Leadership in Energy and Environmental Design (LEED) certified administrator; and

(2) Employs at least one Certified Facilities Manager (CFM) as credentialed by the International Facility Management Association or employs at least one Project Management Professional (PMP) as certified by the Project Management Institute.

(d) An institution that has entered into construction contracts averaging more than \$50 million over the most recent rolling five-year period is responsible for capital project management at that institution if it meets the following additional conditions:

(1) The governing board shall employ a facilities staff experienced in capital project development and management that is suitable for the number, size and complexity of the capital projects being managed and, by December 31, 2011, and continuing thereafter, at least one of these employees shall be Leadership in Energy and Environmental Design (LEED) certified;

(2) The governing board shall promulgate and adopt a capital project management rule in accordance with section six, article one of this chapter. The capital project management rule shall include at least the following items:

(A) Delineation of the governing board's responsibilities with respect to capital project management and the responsibilities delegated to the institution's president;

(B) A requirement for the use of standard contract documents for architectural, engineering, construction, construction management and design-build services as appropriate to a particular project;

(C) The governing board's requirements for the following procedures:

(i) Monitoring and approving project designs to ensure conformance with the state and system goals, objectives and priorities and the governing board's master plan, compact and campus development plan;

(ii) Approving project budgets, including a reasonable contingency reserve for unknown or unexpected expenses and for bidding;

(iii) Approving architectural, engineering and construction contracts exceeding an amount to be determined by the governing board;

(iv) Approving contract modifications and construction change orders; and

(v) Providing a method for project closeout and final acceptance of the project by the governing board.

45 (3) The institutional capital project management rule shall be filed with the commission no
46 later than one hundred eighty days following the effective date of the rule required of the
47 commission and council in section seventeen of this article.

48 (4) The commission may review or audit projects greater than \$5 million periodically to
49 ascertain that appropriate capital project management practices are being employed.

50 (e) For institutions that have entered into construction contracts averaging at least \$20
51 million, but not more than \$50 million, over the most recent rolling five-year period:

52 (1) The governing board, with assistance as requested from the commission, shall
53 manage all capital projects if the governing board meets the following conditions:

54 (A) Employs at least one individual experienced in capital project development and
55 management; and

56 (B) Promulgates and adopts a capital project management rule in accordance with section
57 six, article one of this chapter that is approved by the commission. The capital project
58 management rule may be amended at the discretion of the governing board, but amendments
59 shall be submitted to the commission for review and approval before becoming effective.

60 (2) The capital project management rule of the governing board shall include at least the
61 following items:

62 (A) Delineation of the governing board's responsibilities with respect to capital project
63 management and the responsibilities delegated to the institution's president;

64 (B) A requirement for the use of the state's standard contract documents for architectural,
65 engineering, construction, construction management and design-build services as appropriate to
66 a particular project; and

67 (C) The governing board's requirements for the following procedures:

68 (i) Monitoring and approving project designs to ensure conformance with the state and
69 system goals, objectives and priorities and the governing board's master plan, compact and
70 campus development plan;

71 (ii) Approving project budgets, including a reasonable contingency reserve for unknown
72 or unexpected expenses and for bidding;

73 (iii) Approving architectural, engineering, construction and other capital contracts
74 exceeding an amount to be determined by the governing board;

75 (iv) Approving contract modifications and construction change orders; and

76 (v) Providing a method for project closeout and final acceptance of the project by the
77 governing board.

78 (3) If an institution does not meet the provisions of this subsection, the commission shall
79 manage all capital projects exceeding \$1 million.

80 (4) The commission staff shall review and audit periodically all projects greater than \$1
81 million to ascertain that appropriate project management practices are being employed. If serious
82 deficiencies are identified and not addressed sufficiently within ninety days, commission staff may
83 assume management of all projects.

84 (f) For institutions that have entered into construction contracts averaging less than \$20
85 million over the most recent rolling five-year period and for all community and technical colleges,
86 the commission and council shall manage capital projects exceeding \$1 million. In the rule
87 required by section seventeen of this article, the commission and council, as appropriate, shall
88 adopt procedures to afford participation by the governing boards and staff in the planning,
89 development and execution of capital projects.

§18B-19-9. Higher education facilities information system.

1 (a) The commission and council jointly shall develop and maintain a higher education
2 facilities information system, except for the exempt schools. The higher education facilities
3 information system shall serve as a vehicle for carrying out the following functions:

4 (1) Acquisition of statewide data;

5 (2) Analysis of space use and classification based on nationally recognized standards and
6 measurements to facilitate comparisons among post-secondary education institutions within the
7 state and in the region and nation; and

8 (3) Other purposes as determined by the commission and council consistent with
9 facilitating policy analysis without burdening or interfering unnecessarily with the governance
10 responsibilities which are placed upon the governing boards.

11 (b) At a minimum the higher education facilities information system shall serve the
12 following purposes:

13 (1) Develop and maintain a statewide inventory of higher education facilities, including
14 those acquired by long-term lease, lease-purchase or other arrangement whereby the institution
15 has long-term beneficial use. The inventory shall include, but is not limited to, the institution and
16 campus location of the facility, the construction date, the original cost, square footage, floor plans,
17 type of construction, ownership status, the purposes for which it is used, the current replacement
18 cost and any other data the commission and council consider appropriate, consistent with the
19 provisions of the foregoing subsection (a);

20 (2) Develop and maintain an inventory of all rooms within each facility, which includes, but
21 is not limited to, the room number, the square footage, room usage, number of student stations
22 and any other data the commission and council consider appropriate, consistent with the
23 provisions of the foregoing subsection (a);

24 (3) Provide a vehicle for institutions to submit capital appropriation requests to the
25 commission and council;

26 (4) Provide information on major institutional capital projects, including major maintenance
27 and deferred maintenance projects; and

28 (5) Provide information on facilities needed to calculate the building renewal formula.

29 (c) The commission and council shall establish benchmarks for classroom and class
30 laboratory use including an analysis of utilization for the fall and spring semesters of each

academic year. The efficient use of classrooms and class laboratories is a factor in determining whether an institution needs additional classroom and laboratory facilities.

(d) Each governing board and any institution under its jurisdiction shall participate and cooperate with the commission and council in all respects in the development and maintenance of the higher education facilities information system.

(e) The higher education facilities information system may be used for other purposes set forth by the commission and council in the rules required by section seventeen of this article, consistent with the provisions of the foregoing subsection (a).

§18B-19-10. Authorization to sell and transfer property; use of proceeds.

(a) Notwithstanding any other provision of law or this code to the contrary, the commission, council and governing boards each may sell, lease, convey or otherwise dispose of all or part of any real property that it owns, either by contract or at public auction, and shall retain the proceeds of the transaction.

The commission, council and governing boards may not sell, convey or otherwise dispose of any real property without first performing the following steps:

(1) Providing for property appraisal by two independent licensed appraisers. The property may not be sold for less than the average of the two appraisals;

(2) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the Legislature, and

(5) In the case of the commission, notifying the Joint Committee on Government and Finance.

(b) The commission, council or a governing board may not lease real property for an annual amount of greater than \$50,000 without satisfying the obligations of subdivisions (2) to (4) of subsection (a) of this section.

(c) The commission, council or a governing board shall deposit the net proceeds from the sale, conveyance or other disposal of real property into a special revenue account in the State Treasury to the credit of the commission, council, or governing board that sold, conveyed or otherwise disposed of the real property.

18B-19-11. Authorization to lease-purchase.

(a) The commission or council may enter into lease-purchase agreements for capital improvements, including equipment, on behalf of, or for the benefit of, a state institution of higher education, the commission or council.

(b) After the commission or council, as appropriate, has granted approval for a lease-purchase agreement by a governing board, the board may enter into a lease-purchase agreement for capital improvements, including equipment.

(c) The governing boards of the exempted schools may enter into lease-purchase agreements without seeking the approval of the commission. The governing boards, subject to the jurisdiction of the commission, may enter into lease-purchase agreements of less than \$1.5 million, without obtaining approval of the commission.

(d) A lease-purchase agreement constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the commission, council or the institution and shall be cancelable at the option of the commission, council, or governing board at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the

state or any political subdivision of the state. The facts shall be plainly stated in any lease-purchase agreement.

(e) A lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the agreement as to form by the Attorney General. Proposals for any agreement shall be requested in accordance with the requirements of this section and rules of the commission and council. In addition, any lease-purchase agreement that exceeds \$100,000 total shall be approved as to form by the Attorney General.

(f) The interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

§18B-19-13. Real property contracts and agreements.

(a) In addition to the requirements otherwise provided in this article, any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting from these transactions, shall be approved by the commission or council, as appropriate, and provided to the Joint Committee on Government and Finance for prior review, if the transaction exceeds \$1 million: *Provided*, That the exempted schools shall not be required to get the approval of the commission.

(b) Notwithstanding any provision of this code to the contrary, any acquisition, bequest, donation or construction of new buildings, office space or grounds exceeding \$1 million in appraised value or requiring \$1 million in repairs and renovation or lease payments over the lifetime of the lease, made or accepted by an institution's research corporation established by

11 article twelve of this chapter or an affiliated foundation of an institution under the jurisdiction of
12 the council, shall be approved by the council.

13 (c) The commission, council and each governing board shall provide the following to the
14 Joint Committee on Government and Finance:

15 (1) A copy of any contract or agreement to which it is a party for real property if the contract
16 or agreement exceeds \$1 million; and

17 (2) A report setting forth a detailed summary of the terms of the contract or agreement,
18 including the name of the property owner and the agent involved in the sale.

19 (d) The copy and report required by subsection (b) of this section shall be provided at least
20 thirty days before any sale, exchange, transfer, purchase, lease-purchase, lease or rental of real
21 property, refundings of lease-purchases, leases or rental agreements, construction of new
22 buildings, and any other acquisition or lease of buildings, office space or grounds.

23 (e) A contract or agreement that is for the lease purchase, lease or rental of real property,
24 where the costs of real property acquisition and improvements are to be financed, in whole or in
25 part, with bond proceeds, may contain a preliminary schedule of rents and leases for purposes of
26 review by the committee.

27 (f) For renewals of contracts or agreements required by this section to be reported, the
28 commission, council or governing board shall provide a report setting forth a detailed summary of
29 the terms of the contract or agreement, including the name of the property owner.

30 (g) The Joint Committee on Government and Finance shall meet and review any contract,
31 agreement or report within thirty days of receipt.

32 (h) Each governing board shall provide to the commission or council, as appropriate, a
33 copy of any contract or agreement submitted to the Joint Committee on Government and Finance
34 pursuant to this section.

§18B-19-14. Authorization for sale lease-back.

1 (a) Notwithstanding any other provision of this code to the contrary, a governing board
2 may sell any building that is on unencumbered real property to which the board holds title and

may lease back the same building if the governing board obtains approval of the council or confirmation by the commission, as appropriate, before incurring any obligation: *Provided*, That the exempted schools shall not be required to obtain such approval or confirmation of the commission. The board shall deposit the net proceeds of the transaction into a special revenue account in the State Treasury to be appropriated by the Legislature for the use of the institution at which the real property is located. Prior to such action, the board shall take the following steps:

(1) Provide for the property to be appraised by two licensed appraisers. The board may not sell the property for less than the average of the two appraisals;

(2) Providing notice to the public in the county in which the real property is located by a Class II legal advertisement pursuant to section two, article three, chapter fifty-nine of this code;

(3) Holding a public hearing on the issue in the county in which the real property is located;

(4) For real property with a proposed sale price of \$50,000 or greater, ten days prior to the placement of the Class II legal advertisement, providing written notice to the county commission and municipalities in the county in which the real estate property is located and all members of the Legislature, and

(5) Retain independent financial and legal services to examine fully all aspects of the transaction.

(b) The sale may be made only to a special purpose entity that exists primarily for the purpose of supporting the institution at which the building is located.

§18B-19-19. Applicability to certain institutions.

The governing boards of the exempted schools each may, without obtaining approval of the commission, take any action described or set forth in this article that otherwise would require the approval or confirmation of the commission. The respective governing board shall provide notice of the action to the commission. If the commission requests additional information relevant to the action from the respective governing board, the governing board shall provide information regarding the action to the commission.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2017.

.....
Governor